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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 17, 1998

HAND DELIVERED

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.,
Washington, D.C. 20554

Re: CC Docket No. 98-77

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom or TDS), are an original and 16 copies of its Reply Comments on the Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulations, CC Docket No. 98-77.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter	)	
	)	
Access Charge Reform for Incumbent	)	CC Docket No. 98-77
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulations	)	

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

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REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom or TDS), on behalf of its 106 incumbent local exchange carriers (LECs) in 28 states and by its attorneys, submits these reply comments to respond to comments filed on or before August 17, 1998 in the above-captioned proceeding. The TDS LECs are all subject to rate of return (RoR) regulation and qualify as "rural telephone companies" under the 1996 Act.

I. SUMMARY

There is virtual unanimity among the parties that permanent RoR access relief at this time would be premature. ILECs explain that the results of unresolved universal service and separations changes are vital to quantifying and evaluating the impact of access proposals under

[1] Codified as 47 U.S.C. §153(37) (The definition is numbered (47) in the 1996 Act itself.)

the applicable §254 standards. There is wide recognition that the access plan has to fit into a single coordinated regulatory plan that, when all parts are weighed together, satisfies the statutory criteria for universal service, competition and reduced government interference. MCI correctly urges the Commission to conserve its resources by first settling unresolved price cap access reform issues, such as defining the elusive primary/non-primary line distinction. There is even practical advice to see how the price cap access regime works before extending it, especially given the general consensus that RoR cost characteristics are significantly different from their price cap regulated counterparts.

Some comments even go beyond what really needs to be done first, such as, for example, MCI's customary demand for prescription of a forward looking cost proxy model, in spite of the federal court ruling upholding the Commission's discretion to rely more on marketplace forces and give weight to universal service concerns in its access decisions. AT&T even demands a new Commission rate of return prescription as a first step in RoR access reform because of changes in interest rates and bond rates since 1990. However, its proposal wholly ignores the enormous new risks confronting RoR LECs from the 1996 Act's opening of local markets to competition, the Commission's costly new rules and requirements for ILECs and the extreme volatility of global and U.S. financial markets.

Amid the sound reasons for deferring permanent RoR access reform, a number of parties identify interim plans that will suitably balance (a) the interest in improving economic efficiency, by substantially reducing the usage-based recovery of non-usage-sensitive costs that has traditionally divorced the carrier common line rate structure from cost causation, and (b) the mandates of the 1996 Act and sound public policy for reasonably comparable rural and urban rates, services and access to advanced services and nationwide geographic rate averaging. IXCs seek to offload all common line costs onto end users, mainly by championing higher RoR SLC and PICC caps that will destroy rural parity and jeopardize long distance rate averaging. GSA's bid to equalize residential and business charges would make the rural rate disparity problem worse, and GSA ignores the Commission's longstanding particular universal service concerns about residential and small business subscribers. But other comments explain that nationwide average caps for SLC and PICC increases and keeping the current cap for all residential line SLCs will permit the Commission to increase efficiency with greater reliance on flat rates to recover common line costs. And these ceilings will avoid running afoul of the Commission's obligations to ensure rural comparability and geographic averaging of all interexchange carrier charges to end users, as long as the agency strictly enforces the nationwide averaging requirement for PICC pass through charges, as well as long distance rates.

The weight of the record shows that continuing usage-based collection of the residual common line costs not transferred into the capped SLCs and PICCs is lawful and workable. The Commission should seriously consider AT&T's constructive suggestion (which requires joint board consideration) for universal service funding of all excess RoR costs above the revenues they could recover by charging the national average of price cap LECs' traffic-sensitive rates. This support to buffer RoR LECs' high usage-based access charges via a new universal service arrangement would improve competitive neutrality, sustain geographic interexchange rate averaging and stimulate interexchange competition in rural markets.

There is little support for increasing the size of the residual CCL charge. One major IXC agrees that transferring switching charges for line side port costs when RoR end user charges are capped would involve unjustified costs and burdens without gaining further reductions in usage-based CCL recovery. The ILEC parties urge maintaining current traffic sensitive recovery of the TIC. Moreover, IXC claims that the pre-1996-Act Comptel case requires eradication of any cost recovery for the TIC costs run up against the Constitutional duty to avoid confiscation for these real costs and the Eighth Circuit's upholding of the Commission's discretion to treat the price cap LECs' TIC by measures other than elimination. The universal service concerns for RoR areas and the Commission's promise not to slash rural ILECs' cost recovery while universal service issues remain open provide an adequate explanation for continuing TIC recovery.

Finally, arguments against giving more pricing and regulatory flexibility to RoR ILECs collide with the Act's emphasis on reducing government micro-management of the telecommunications industry. As LEC comments explain, the Commission has to let the marketplace work to achieve genuine competition, rather than simply a different variety of government controlled marketplace.

TDS Telecom urges the Commission to (a) wait or, at most, adopt the interim national average ceilings plan our filings advocate, (b) continue TIC recovery as it is, (c) continue to allow, but refrain from increasing, the usage-based residual CCL, (d) diligently follow the §254 comparability and averaging mandates and (d) start right now to give RoR LECs more flexibility to respond to marketplace signals in the new competitive environment.

II. MOST COMMENTS AGREE THAT "IT'S THE WRONG TIME AND THE WRONG PLACE" TO MAKE PERMANENT ACCESS CHARGE CHANGES FOR RATE OF RETURN LECS

A. The Commission Has Essential, But Unfinished Business to Attend to Before It Can Decide About Permanent RoR Access Charge Reform

TDS Telecom explained in its opening comments that the Commission should refrain from prescribing permanent access charge changes for RoR regulated LECs because it cannot quantify or evaluate the effects of access charge reform proposals — let alone conclude that a new access charge regime complies with the requirements of §254 — while crucial universal service questions remain unresolved. The comments of other parties demonstrate widespread agreement that the Commission must deal with unfinished business before it can adopt permanent RoR access charge changes.

Most LEC comments (e.g., NECA at 3-4, NRTA/NTCA at 4-7, USTA at 8-11) emphasize the essential role that full universal service implementation must play in any access reform initiative, especially in the rural service areas typically served by RoR LECs. As Congress recognized by enacting the universal service requirements in §254 of the 1996 Act, the Commission cannot simply rely on marketplace forces to satisfy the national policy of reasonably comparable rural and urban rates, services and access to advanced telecommunications and information services, as well as geographically averaged long distance charges throughout the nation.

Even MCI agrees (pp. 7-9) that it is unwise for the Commission to turn its attention to reforming access charges that affect only 10% of the nation's access lines. Its main argument in favor of deference is its dissatisfaction with the state of price cap access reform, which affects 90% of U.S. access lines. TDS Telecom disagrees with MCI's reiteration of its habitual claim that the FCC must first prescribe access charges based on TELRIC for price cap carriers. That argument has already been rejected by the FCC in the price cap access reform proceeding, in favor of a less regulatory approach. Its choice not to prescribe has, in turn, recently been upheld by the Eighth Circuit.[2] However, MCI correctly points out (pp. 7-9) that unsettled universal service issues, "likely to prove tremendously time consuming for the Commission," support deferring RoR access reform for now. MCI elaborates on this theme, explaining (p. 9) that the Commission is many months behind in defining primary and non-primary lines even with respect to the new access regime for price cap LECs. Universal Service concerns can also justify a decision not to prescribe reduced rates.[3]

The Western Alliance (pp. 12-13) and the Minnesota Independent Coalition (Minnesota Coalition) (pp. 10-11) note that the Commission has not dealt adequately with controversies surrounding increases in IXCs' end user charges (to recover PICCs and universal service costs)

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[2] Southwestern Bell Telephone Company, No. 97-2618, slip op. at 48-51 . (8th Circuit Aug. 19, 1998) (upholding FCC discretion to maintain lawful rates based on embedded costs during transition to competition).

[3] Southwestern Bell, slip op. at 53.

and criticize the IXCs' failure to flow access charge reductions through as end user rate reductions; that is, as "offsetting decreases in long distance toll charges." The Fred Williamson and Associates comments (p. 4) add the wise suggestion that the Commission should wait to evaluate whether its price cap access charge reforms work well, rather than rushing to apply the same inadequately assessed structure to RoR LECs.

Many comments (see, e.g., USTA at 2-4, NTCA/NRTA at 2, Western Alliance at 4, TANE at 2) confirm that RoR LECs are significantly different from price cap LECs, especially because they are so heavily dependent on their interstate access charges, and thus particularly vulnerable to reductions in access revenues. The joint NRTA/NTCA comments also explain (pp. 4-5) that even short term access changes must not undermine the interim universal service plan for rural LECs, which is necessary to avoid the disruption Chairman Kennard has promised to spare rural carriers and their customers at least during the implementation of universal service measures for their areas.[4] The Commission should therefore heed MCI's warning (p. 3) that "the time is not now ripe for the Commission to divert its limited resources to reform the access rate structure of rate-of-return ILECs" and refrain from adopting any permanent changes.[5]

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[4] Keeping America Connected, Remarks by William Kennard, Chairman, Federal Communications Commission to Organization for the Promotion and Advancement of Small Telephone Companies, January 12, 1998 (Kennard Speech).

[5] In fact, the Commission apparently is not willing to give RoR access charge issues its full attention. For example, as of the morning of this filing, the Commission had not yet posted the NPRM or the comments in this proceeding on the Access Reform Homepage where price cap access reform documents have been made available.

B. Permanent RoR Access Reform Must Be Prescribed and Evaluated Under <u>All</u> Relevant Statutory Standards as an Integrated Element in a Comprehensive Regulatory Reform Package

NRTA/NTCA emphasize (pp. 8-13) the need for comprehensive resolution of the Commission's long list of intricately interrelated issues. They urge the Commission to coordinate access charge reform with other related issues to fashion a policy package which can be evaluated as a whole in light of the 1996 Act's commitment to competition, deregulation and universal service: They suggest an "expanded trilogy" that includes separations reform. Moreover, while AT&T seeks immediate and radical changes, much of what it proposes — such as further action to shift the remainder of interstate costs allocated by DEM Weighting out of Part 36 and, consequently, into the intrastate jurisdiction, and its unwarranted demand for a new rate of return prescription[6] — would necessarily oblige the Commission to conduct proceedings outside the bounds the NPRM sets for this rulemaking proceeding to resolve the access issues. This, too, illustrates that nobody thinks RoR access issues can be dealt with conclusively in isolation in this proceeding.

Issues that require integrated resolution abound. For example, GVNW (p.7) correctly urges the Commission to begin active enforcement of the geographic rate averaging directives in §254(g) if it proceeds with its proposals, since they will aggravate the pressure on IXCs to deaverage their charges. Moreover, TANE explains (pp. 2-6) that proposed changes in interstate

[6] The substantive reasons to reject AT&T's demand that the Commission prescribe a new interstate rate of return as an antecedent to the access reform it advocates are discussed in the following section.

access charges, such as higher SLC charges and the establishment of PICCs, will also have an impact on intrastate access charges in the many states that mirror interstate access charges. In some states, says TANE, reduced interstate CCL charges will automatically reduce RoR LECs intrastate access revenues, leaving more real RoR costs unrecovered. ILECs will generally have to seek prospective state authority for local rate increases or other state cost recovery measures to absorb the unrecovered costs in the future.

The record is clear that the Commission cannot fashion new RoR access policy in a vacuum. It must fit its access reform actions into the intricately balanced structure of the new national telecommunications policy emerging from the 1996 Act; and it cannot do that yet.

C. AT&T's Demand for Prescription of a New Interstate Rate of Return is Ill-Timed, Inconsistent with Maintaining Interim Rural Support and Fundamentally Misguided

Without a word about the impact on universal service or the incentives for rural infrastructure enhancement, AT&T (p. 4) calls on the Commission to attack the disparity in the access charges it pays to RoR and price cap LECs Its self-interested plan is to reduce the higher access charges caused by RoR ILECs' higher costs of service by redefining recoverable costs at a lower level. The tactic it urges (pp. 5-7) is a sharp reduction in the authorized interstate rate of return recovered in RoR LECs' access charges. AT&T (p. 7) invokes the lower interest rates and telephone bond yields since the last prescription in 1990 as warranting the reduction.

However, AT&T totally ignores the dramatic changes in the risks confronting small and rural LECs since the last prescription. In 1990, RoR ILECs were shielded from local competition, were entitled to high cost support based on their actual costs of service, including their ongoing investments to modernize their networks and service offerings, and operated in a reasonably stable regulatory environment.

All that has changed. The post-1996 Act environment exposes rural LECs to a national policy commitment to local competition, to a host of aggressive new regulations and to sweeping regulatory proposals and costs imposed to strengthen their competitors. The new or proposed responsibilities and burdens for incumbent LECs range, for example, from mandates to upgrade their networks to provide number portability and flex-ANI signaling to completely overhauling their information systems to track and restrict their use of consumer information and, if adopted, to track their internal operations in detail as an aid to competitors in using their facilities and services. The new world of telecommunications is one of enormous risks and uncertainties for rural LECs. Given the uniquely high proportion of rural LECs' cost recovery that comes from interstate access and universal service support, adverse outcomes for the programs under review could even impair the security of RUS loans. And, in addition to the unknowns emerging as the new telecommunications marketplace takes shape, recent developments in U.S and global stock markets raise questions about the future availability of capital for technology-intensive industries.

Amidst the turmoil and change, crucial questions about how — and even whether — rural RoR LECs can recoup their costs of providing universal service simply cannot be answered yet. TDS Telecom agrees with GVNW (p. 9) that all costs actually incurred by LECs should be recovered. At present, however, the source and level of universal service support for rural LECs after 2001 is unknown. So far, the Commission's decision that it will reduce its support for high cost universal service to 25% of what is necessary, trusting each state to generate the rest, remains in force. The Commission has also decided that it is no longer willing to use actual costs as a measure of high costs needing federal support, once it can complete an imaginary network proxy method for predicting costs. The Commission has yet to decide what to do about stranded actual costs if it drastically redefines what costs an RoR LEC may recover and is under IXC pressure to deprive LECs of adequate cost recovery. For example, while MCI (pp. 4-7) continues to press for the proxy model, GCI (pp. 7-8) callously recommends simply eradicating ILEC costs above forward looking costs as a reminder that competition does not respect incumbents' investments.[7] Thus, the record shows that AT&T's implicit assumption that other factors (i.e., RoR ILECs' risks) have remained unchanged while interest rates decreased cannot withstand scrutiny.

Reducing access and universal service revenues by slashing the authorized rate of return, as AT&T urges, would also make a mockery of Chairman Kennard's assurances that he is "committed to ensuring that there are no precipitous changes in the level of universal service

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[7] The decision it quotes as authority says that utilities cannot recoup costs that "have become uneconomic due to competitive pressures," not that regulators can prescribe their hypothetical version of forward-looking rates and force utilities to forego recovery of what they actually spent.

support for small companies ..." as the Commission considers universal service reform.[8] Nor would cuts in rural ILECs' revenues comport with Congress's instructions to the Commission in §706 and §254(b)(3) to encourage nationwide advanced broadband capability and remove obstacles to infrastructure investment. Indeed, TDS Telecom's September 14 comments on the §706 Notice of Inquiry explained that nationwide advanced broadband capability will require additional universal service support.

Given the enormous changes and pervasive remaining uncertainties that overshadow RoR LECs' operating conditions today, AT&T's superficial assertions that RoR LECs' access charges are "excessive" and that the current authorized rate of return is "overcompensatory" are irresponsible. Therefore, the Commission should reject AT&T's proposal to re-prescribe the interstate rate of return when the future viability of rural LECs hangs on what the Commission does in the many crucial pending proceedings discussed in the earlier sections of these reply comments.

D. Only Interim Changes Have Solid Record Support

The weight of the record plainly establishes that the Commission is not in a position now to adopt permanent access charge reforms for RoR LECs. It is simply not possible now to integrate its access charge proposals into an overall regulatory framework where the sum of all

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[8] Kennard Speech, supra, n.5.

the components adds up to the telecommunications environment Congress has ordained in the Communications Act, as amended by the 1996 Act. Therefore, the Commission should either defer access changes for RoR LECs or take the cautious interim steps — consistent with §254 and the Commission's commitment to maintaining current support flows for rural ILECs — that TDS Telecom (pp. 2-23), USTA (Sections II-IV) and the joint NRTA/ NTCA comments (pp. 16-32) recommend.

III. ANY INTERIM CHANGES TO ROR LECS' ACCESS CHARGE STRUCTURE MUST SATISFY THE UNIVERSAL SERVICE MANDATES OF §254

A. Shifting the Entire Cost of the Local Loop into End User Charges is Neither a Necessary Nor a Desirable Outcome

It is true that there is widespread agreement that it will improve economic efficiency to recover more of the cost of RoR LECs' loops, which do not vary by how much the loops are in use, from flat rates instead of the usage-based CCL charges that recover those costs today. However, parties differ in their views as to the extent or nature of the changes the Commission should prescribe to further this purpose. For example, ILEC commenters (e.g., Western Alliance at 9-12) explain that the statutory universal service commands must outweigh the pursuit of economic efficiency to the extent of far higher end user charges in RoR ILEC service areas. As noted earlier, universal service needs struck the Eighth Circuit as one of the reasonable explanations for the Commission's decision to await market pressures on access charge levels for the price cap ILECs rather than prescribing what the Commission had labeled as economically efficient FLEC-based levels.[9]

In any event, the general consensus that flat-rated recovery is more efficient for common line costs does not indicate that IXCs should end up paying no common line costs. One of the main public policy reasons not to let RoRs' PICCs rise to the levels allowed by the price cap access regime is the need to avoid further incentives for IXCs to deaverage their charges to end users, directly or by evasive tactics like not offering equivalent calling plans in rural and urban markets. Bulk billing of the residual CCL to the IXCs, suggested by GVNW (p.5), could also remove the usage-basis for the charges to IXCs. However, the real goal behind the IXCs' objections to common line cost recovery is their desire to foist the whole amount on end users, a result which end users and Congress will logically equate with raising local rates.

B. Capped SLCs and PICCs Will Best Satisfy the Statutory Rural-Urban Comparability and Geographic Averaging Requirements

NRTA/NTCA (pp. 2-8), USTA (pp. 8-9) and Western Alliance (p. 5) agree that any changes to the access charge rules for RoR LECs must be able to pass muster under the 1996 Act's universal service requirements. Section 254(b) and (g) of the Act require (1) affordable rates, (2) reasonably comparable rural and urban rates services and access to advanced telecommunications and information services, and (3) geographic interexchange rate averaging. OPASTCO (p. 7), among others, explains that the comparability and averaging requirements apply not only to long distance rates, but also to any charges IXCs pass through to recover the

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[9] Southwestern Bell at 49-5.

PICCs they pay. The NRTA/NTCA comments (p. 17) reiterate that §254(b)(3)'s requirement for reasonably comparable rates for urban and rural subscribers also encompasses SLC levels.

In line with this nationwide parity theme, several parties (see, e.g., JSI at 3-5) urge the Commission to maintain residential and single line business SLCs for RoR carriers at $3.50, as the Commission has done for price cap primary residential and single-line business lines. However, several comments (OPASTCO at 14-15, USTA at 13-15, NRTA/NTCA at 26-28) also argue compellingly that the Commission should abandon the notion that non-primary residential lines should pay higher SLCs. They reason that the distinction is hard to administer, invites customer deceit and invasions of consumers' privacy and will deter customers in high cost areas from subscribing to lines to use for Internet and other emerging services that the 1996 Act says to encourage. Moreover, the lines themselves are indistinguishable in terms of how they are provided and what they can do. Indeed, as MCI complains (p. 9), the Commission has not yet managed to develop a reasonable definition to tell primary and non-primary lines apart. As a result, it has countenanced variations in price cap LEC tariffs, which adds to the arbitrary impact of this distinction that lacks a valid underlying difference. The record supports Commission action to rescind the invalid distinction for price cap LECs. In any event, there is no explanation of why the spurious distinction should be extended to RoR LECs.

JSI concludes (p. 17) from its analysis of the impact of applying the price cap LECs' access charge structure to RoR LECs that the Commission should, in effect, freeze all RoR SLCs at their current levels. Since RoR LECs' cost structures will preclude them from quickly eliminating their usage-based CCL charges (as will price cap LECs) and will still leave their traffic sensitive rates significantly higher, JSI reasons (p. 6), the proposed application of the price cap approach is "neither efficient nor necessary."[10]

Most of the LEC comments (e.g., USTA at 10-17, Western Alliance at 13-15) also urge the Commission to cap the PICCs charged by RoR LECs at each year's nationwide average of the price cap LECs' PICC charges. Thus, while there is broad agreement with the Commission that the geographic averaging mandate governing interexchange carrier rates prohibits the IXCs from deaveraging any end user charges they employ to recover the PICCs they pay, the NRTA/NTCA (pp. 23-26) comments join TDS Telecom in urging the Commission to cap the PICCs charged to the IXCs to alleviate the strong additional incentive to deaverage long distance rates that deaveraged PICCs would present for IXCs

There can be no doubt that the incentive to deaverage is powerful. AT&T expressly opposes geographic rate averaging (p. 9). GCI (which chose voluntarily to serve a high cost regional market) complains that it "is forced to compete against nationally averaged rates of AT&T." The Commission has already had to turn down requests to forbear from requiring averaging for passed through PICC charges.[11] Indeed, AT&T's desire for forbearance from the

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[10] In contrast, but with the same underlying objectives, OPASTCO (p.3) would not object to giving RoR LECs the option to charge PICCs up to their full costs for multiline business lines, provided that the Commission honors the rural comparability mandate in §254 for all charges to end users and effectively enforces geographic averaging of long distance rates.

[11] Access Charge Reform, CC Docket No. 96-262, 12 FCC Rcd 15982, ¶97 (1997) (Price Cap Access Order).

averaging mandate is apparently so strong that it pretends that there is no statutory obligation : It repeatedly mischaracterizes the law duly enacted by Congress (pp. i, 9) referring for example, to "the Commission's policies that require nationwide averaged long distance rates." The combination of (1) the IXCs' overt hostility towards the national rate averaging law, enacted so recently by the U.S. Congress, and (2) the Commission's forbearance from most regulation of interstate carriers' charges and practices compels more than lip service for the averaging requirement. Capping the RoR LECs' PICCs at the national average of the price cap LECs' PICCs gets at the enforcement problem by dealing with the root cause of the IXCs' incentive to deaverage — access charge disparities between price cap LECs and high cost rural RoR companies, particularly those in the NECA pools.

C. AT&T's Proposed Universal Service Solution for Above-Average RoR Access Charges Merits Careful Consideration

AT&T's interim proposal to implement nationwide long distance rate averaging via universal service support offers a reasonable, fair and lawful alternative for implementing §254(g) that the Commission should seriously consider. Shorn of its unjustified companion proposal to reduce the rate of return for RoR LECs, AT&T's proposal to "peg" all "traffic sensitive" RoR LEC charges to the nationwide average of price cap LECs' charges and let RoR LECs recover the remainder of their higher-than-average traffic sensitive costs through federal high cost support breaks out of the mold of compartmentalized, issue by issue decisions. The hybrid access and universal service solution would integrate access reform into the universal service regime enacted by Congress in §254.

Congress clearly recognized that its interexchange rate averaging requirement is a component of national universal service policy by including it in §254, the Act's broad universal service provision, as well as by including interexchange service in the rural comparability mandate in §254(b)(3). The nationwide statutory geographic averaging requirement not only extends the averaging duty beyond AT&T to all interexchange providers, but also applies to both interstate and intrastate interexchange charges. AT&T now bears the lion's share of the nationwide rate averaging burden, since it is the only interstate carrier obligated to serve throughout most of the nation as the carrier of last resort, unless it secures the Commission's approval for discontinuing or impairing service. If the Commission spreads the obligation for service on high cost routes beyond AT&T and its customer base, it will simply be following the directive in §254(d) that all interstate providers should contribute on a nondiscriminatory basis to the cost of providing universal service. Spreading above-average interstate access costs through a new federal support mechanism is the most competitively neutral way to implement nationwide rate averaging, since any competing interexchange carrier that serves the high cost route will benefit from the access charge cap. Moreover, reducing the disparity in the rural RoR LECs' access charges (as AT&T realizes in discussing originating access reductions) would encourage more IXCs to compete in rural markets. It would also help all IXCs, including AT&T, to make optional calling plans available in rural areas. Both results would extend the benefits of long distance competition to more rural customers.[12]

D. The Uncapped SLCs and PICCs MCI Advocates Would Violate the Act's Rural Rate Comparability and Interexchange Averaging Requirements

MCI recommends (pp. 11-14) against capping RoR LECs' multiline business and non-primary residential SLCs at the national average (although MCI itself has pointed out the Commission's crippling failure even to define non-primary lines). JSI (pp. 5-6 and Table 1) has shown, however, that (a) the resulting rural RoR LECs' non-primary line residential SLCs a would be far from comparable to urban price cap LECs' SLCs, remaining at $9 even in 2002, and (b) the disparity in RoR PICCs would remain at $10.50 per month in 2008. JSI estimates that in 2008, primary line PICCs in RoR areas would be almost $3 per month higher than price cap LECs' primary line PICCs. In that year, non-primary line PICCs and multiline business PICCs for RoR LECs' customers would exceed the price cap LEC level by $10.50 and $14.41 per month, respectively.[13] If passed through on a deaveraged basis, the prices paid by rural consumers would diverge even further from the reasonable parity Congress ordained. Disparities in PICCs, as OPASTCO recognizes (pp. 6-7), will add to the pressure for deaveraging by IXCs, contrary to §254(g). Adding to the already-acute pressures towards deaveraged interexchange

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[12] The access charge capping and universal service recovery plan, together with PICCs charged to IXCs, would also continue to recover a fair share of the costs imposed on ILECs to let IXCs reach their customers from the IXCs and their interexchange customers.

[13] Only GCI asserts (p. 1) that differences between price cap and RoR LECs are "inconsequential," and it offers no support or analysis of its conclusionary contention. In contrast, both AT&T and MCI recognize that the rules must accommodate real factual differences in the cost characteristics of RoR LECs.

charges, whether consisting of disparate long distance rates or flat rates on end users to recover interstate costs, is detrimental to rural customers and can jeopardize rural economic development.

Both MCI and AT&T representatives on a panel at the NARUC Summer Committee Meetings in July acknowledged their companies' obligation to average charges passed through to their end users to recoup the PICCs charged by LECs. Notwithstanding that recognition, the interexchange carriers would surely respond to such large rural access cost disparities by stepping up their pressure on the Commission to forbear from enforcement of rate averaging, even though there is no rational basis for finding that rural consumers would be adequately protected without enforcement of the averaging law.

The Commission should reject the alternative of uncapping RoR SLCs and PICCs to reduce CCL charges to IXCs. Fortunately, it has before it preferable interim alternatives that will avoid a collision with the language and intent of §254.

E. GSA's Proposal for Equalizing PICCs for Residential, Single Line Business and Multiline Business Users Will Shift Even More Costs Onto Rural Residential End Users, in Conflict with the Comparability Mandate

GSA (pp. 7-10) argues against setting higher ceilings on PICCs for multiline businesses, claiming that the differential is a new implicit subsidy from business to residential customers. MCI urges adjusting the SLC and PICC to higher levels for RoR LECs, saying (pp. 16-17) that higher RoR costs and the consequently slower phase-out of the CCL would prolong multiline business users' subsidy of residential users. However, the Eighth Circuit found the Commission's universal service discretion ample to permit higher multiline business charges as the price cap access reform plan transitions towards a more uniform cost recovery.[14] Moreover, with an interim cap on RoR PICCs at the national average of the price cap LEC's average level each year, the RoR charges will mirror the differential the court found reasonable.

While the LECs are in agreement that leaving the residual costs in the per minute CCL charge will not overburden the IXCs or end users, TDS Telecom, like AT&T, realizes that the ultimate solution to reconciling higher RoR costs with both the universal service mandates and the competitive marketplace will compel the Commission to resort to the federal universal service support mechanism.[15] Until the universal service regime is completed and takes care of high cost support, the Commission is within its authority to continue to recover costs from CCL charges, to preserve the access charge distinction for multiline businesses that has been effect for more than a decade, and to treat proposals that would raise SLCs and undercut rate averaging for residential customers with particular caution.

In any event, GSA and MCI exaggerate the supposed unlawfulness of the alleged "implicit subsidy" involved in multiline business versus residential rate distinctions. The legislative history of the requirement for "explicit" federal subsidies plainly recognizes the need

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[14] Southwestern Bell at 31-33.

[15] The Rural Telephone Coalition and Home Telephone Company make constructive suggestions about using Long Term Support (RTC, p. 19) or a mechanism modeled on Long Term Support (Home, p. 6) to recover some or all of the costs remaining in the CCL after capping RoR access charges. These proposals, as well as AT&T's traffic sensitive universal service support proposals, should be given consideration when the Commission coordinates its universal service, separations and access charge into a comprehensive plan that satisfies §254.